

EXHIBIT

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HR/LR Policy # 1446

COVID-19 Proof of Vaccination and Testing

Date Issued: 8/11/2021

Effective Date: 9/8/2021

Authority: Enterprise Employee Resources

OVERVIEW

Objective

To prevent the transmission of COVID-19 by: requiring proof of COVID-19 vaccination status of agency staff who are assigned to work at the workplace (rather than at-home telework), wish to access the workplace for more than 10 minutes, or otherwise provide agency services outside the staff member's home; and by providing standards and expectations for mandatory testing of agency staff who have not provided proof of full COVID-19 vaccination.

Policy Statement

The COVID-19 pandemic presents an unprecedented challenge to our State. The virus is highly contagious, including among asymptomatic people, and potentially deadly. As of August 6, 2021, over 7,600 of our family members, friends, and neighbors in Minnesota have perished from COVID-19. According to the Centers for Disease Control and Prevention ("CDC") and the Minnesota Department of Health ("MDH"), the best way to prevent infection and from spreading the disease is by being vaccinated. COVID-19 vaccines have proven themselves to be safe and effective. Staff who access the workplace or provide public service outside of their homes on behalf of an agency without vaccination pose a particular risk of COVID-19 exposure to themselves, their colleagues, and to members of the public. Additionally, ongoing community transmission of the more transmissible Delta variant of COVID-19 in Minnesota, especially among unvaccinated individuals, presents a continuous risk of infection.

The State strongly encourages agency staff to get vaccinated against COVID-19. To protect, to the extent reasonably possible, the health and safety of our employees and our customers from the direct threat resulting from the spread of COVID-19 in the workplace and to members of the public, agency staff who are assigned to work at the workplace (rather than at-home telework), wish to access the workplace for more than 10 minutes, or otherwise provide agency services outside of their home must provide proof of their COVID-19 vaccination status. All agency staff who are assigned to work at the workplace (rather than at-home telework) or who otherwise provide agency services outside of their home and do not submit proof of full COVID-19 vaccination must undergo mandatory COVID-19 testing at least weekly.

This policy is subject to change at MMB's discretion, including based on public health guidance. Staff members may be subject to additional attestation, vaccination, or testing requirements under agency policy or state or federal law.

Scope

This policy applies to all employees, contractors, vendors, volunteers and interns of executive branch agencies (as defined in Minnesota Statutes, section 43A.02, subds. 2 & 22), Minnesota State Retirement System, Public Employees

Retirement Association, Teacher's Retirement Association, and Minnesota State Colleges and Universities system, who are assigned to work at the workplace (rather than at-home telework), who wish to access the workplace for more than 10 minutes, or who otherwise provide agency services outside of their home.

Definitions and Key Terms

Terms	Definitions
<i>Fully Vaccinated</i>	<p>According to the CDC, in general, people are considered fully vaccinated against COVID-19:</p> <ul style="list-style-type: none"> • 2 weeks after their second dose in a 2-dose COVID-19 vaccination series approved by the U.S. Food and Drug Administration ("FDA") or the World Health Organization ("WHO"); or • 2 weeks after a single-dose COVID-19 vaccine approved by the FDA or the WHO. <p>Staff who do not meet these requirements are NOT fully vaccinated.</p>
<i>Staff</i>	Employees, contractors, vendors, volunteers, and interns.
<i>COVID-19 Test</i>	A medical test to determine if someone has an active COVID-19 infection. As methods become available, recommended tests may include a polymerase chain reaction (PCR) test or an antigen test. A test will be administered by contracted medical personnel or, if approved by agency Human Resources, may be self-administered.
<i>Workplace</i>	Any location outside of a staff member's home where State work is performed or any location visited by the staff member for more than 10 minutes while on work time.

Exclusions

This policy does not apply to staff who have an approved telework arrangement and solely telework from home, do not access the workplace for more than 10 minutes, and do not otherwise provide agency services outside the staff member's home.

GENERAL STANDARDS AND EXPECTATIONS

I. Proof of Vaccination Status

Agency staff who are assigned to work at the workplace (rather than at-home telework), wish to access the workplace for more than 10 minutes, or otherwise provide agency services outside their home, must submit to agency Human Resources an attestation regarding their COVID-19 vaccination status, in the form provided in the “Forms” section of this policy.

Human Resources will review the attestation form and proof of COVID-19 vaccination and verify on the attestation form that they have reviewed the proof of full COVID-19 vaccination provided by the employee. Acceptable proof that an individual is fully vaccinated against COVID-19 includes:

- an original CDC COVID-19 vaccination card
- a paper or electronic copy of a CDC COVID-19 vaccination card
- if vaccinated in another country, then an original or copy of an alternative official vaccination record, as proof of FDA- or WHO-approved COVID-19 vaccination status

Agency staff have the right to refuse to receive a COVID-19 vaccination and to refuse to provide an attestation reflecting their COVID-19 vaccination status, but the staff member will be considered to be unvaccinated for the purposes of this policy.

Proof of full vaccination against COVID-19 must legibly show, at a minimum:

1. Name of the individual vaccinated
2. Date of birth of the individual vaccinated
3. The manufacturer of the vaccine
4. The date(s) on which the vaccine was administered

If the proof is not legible or verifiable in the form presented, the agency may ask the staff member to present the original document.

In order to be considered fully vaccinated against COVID-19, the staff member must have received a COVID-19 vaccine that has been approved by the U.S. Food and Drug Administration (“FDA”) or the World Health Organization (“WHO”). If the vaccine was administered outside of the United States, documentation must include the above information in English.

The attestation forms will be treated as confidential medical records under applicable law. Information regarding whether a staff member has shown proof of full vaccination, and information on whether the staff member must submit to mandatory COVID-19 testing, will be provided to agency HR staff, agency safety administrator, members of the agency’s staff with a business need to know, and others authorized by law.

Staff who provide proof to agency Human Resources that they are fully vaccinated against COVID-19 are exempt from participation in the COVID-19 Testing Procedure under this Policy.

Staff who have an approved telework arrangement and are not required to work in the workplace or provide agency services outside of their home are not subject to the COVID-19 Testing Procedure in this Policy, but they will only be allowed to enter the workplace for more than 10 minutes or provide agency services outside of their home if they attest to and provide proof of being fully vaccinated against COVID-19.

II. COVID-19 Testing Procedure for Agency Staff Who Do Not Submit Proof of COVID-19 Vaccination

Agency staff who show proof of full vaccination against COVID-19 are not required to submit to COVID-19 testing.

Until a staff member subject to this policy submits proof of full vaccination against COVID-19, they must undergo mandatory testing for COVID-19 at least weekly, as determined by the agency. The COVID-19 test and results must be conducted and handled in compliance with all applicable rules and laws. Due to the pandemic and covered staff's job-related interaction with others, COVID-19 testing is job-related and consistent with business necessity. A positive COVID-19 test result will not be used as the basis for discipline or discharge.

- A. If the agency has a testing facility, then testing will be performed on site. If the agency does not have a testing facility, the agency may require staff to provide proof of both test submission and test results from a State testing facility or a non-State testing facility.
- B. Agency staff have the right to refuse to take a COVID-19 test. Prior to COVID-19 testing, agency staff receive the COVID-19 Testing Consent form. Signed COVID-19 Testing Consent forms must be maintained by agency Human Resources in a medical file that is separate from the staff member's personnel file.
 1. Staff who consent to COVID-19 testing and sign the consent form and any other forms necessary for testing will proceed with the COVID-19 test.
 2. Staff who refuse to sign the consent form or any other forms necessary for testing, refuse to submit to a COVID-19 test, or refuse to provide documentation of test submission and test results if the agency does not have a testing facility, will be informed that they will be excluded from the workplace, and may be subject to disciplinary action, up to and including discharge, for refusing a work directive.
 - a. These staff members may be sent home and placed in no-pay status (ETL for employees) until they have been tested for COVID-19 or until management, in its sole discretion, determines they no longer require COVID-19 testing. If the staff member is an employee of the agency, prior to being placed in no-pay status, they will be offered a meeting with their supervisor to learn the reasons for being placed in no-pay status and to tell their side of the story. The employee may have union representation at the meeting.
 - b. Staff placed in no-pay status who later determine they wish to be tested may obtain a COVID-19 test on their own time at their own expense and have the results reported to agency Human Resources or may be tested at an agency facility with agency approval.
 3. **Covered staff who become fully vaccinated against COVID-19 or who did not previously attest to their full COVID-19 vaccination status may complete a new attestation form, present proof of full vaccination against COVID-19, and will be removed from the testing requirement.**
- C. Procedure for agencies that have facility testing on site:
 1. The agency will determine testing dates which will occur at least weekly.
 2. Testing will occur during work hours and be considered work time.
 3. Covered staff undergo COVID-19 test.
 4. Staff are provided the MDH "COVID-19 Post-Test Instructions" form.
 5. COVID-19 test specimens are submitted to the designated testing laboratory for testing.
 6. COVID-19 test results are communicated as follows:
 - a. The testing laboratory will deliver the COVID-19 test results to a designated vendor who will communicate the results to the staff member.

- b. The testing laboratory will report positive test results to MDH and/or local public health. State and federal laws may authorize or require MDH to share a staff member's health information with others without the staff member's consent.
 - c. The testing laboratory will also report positive test results to agency HR.
- D. Procedure for agencies that do not have an on-site testing facility:
 - 1. The agency will determine testing dates which will occur at least weekly and will either send the staff member to a State testing facility or to a non-State testing facility. The agency has sole discretion to choose or authorize the testing location and whether to accept the results from a particular testing method.
 - 2. Testing will occur during work hours and be considered work time.
 - 3. The staff member must provide agency HR documentation of test submission either on the same day or no later than the next day the staff member is scheduled to report to work, and must submit documentation of test results on the same day the staff member receives them if it is a workday, or no later than the next day the staff member is scheduled to report to work.
- E. Staff members with positive test results must call in to Human Resources and their supervisor, must not report to work, and must isolate according to current MDH Guidelines for the applicable profession.
 - 1. The staff member's supervisor and/or manager will determine if the staff member's job duties can be performed through telework.
 - 2. If the staff member's supervisor and/or manager determines the staff member's job duties cannot be performed through telework or does not approve the staff member to telework, the staff member must contact the designated agency HR representative to determine what type of leave the staff member may be eligible to use.

III. Confidentiality of Medical Information

Agencies must maintain the confidentiality of staff COVID-19 test results and vaccination status as provided by law. All information gathered under this Policy, including test results, vaccination status, attestation forms and signed COVID-19 Testing Consent forms, must be retained by HR according to the applicable retention schedule and in a secure medical file separate from the staff member's personnel file.

Testing information may be shared with the designated testing laboratory, the designated vendor, the Minnesota Department of Health, local public health, agency HR staff, agency safety administrator, members of the agency's staff with a business need to know, and others authorized by law.

COVID-19 vaccination status may be shared with agency HR staff, agency safety administrator, members of the agency's staff with a business need to know, and others authorized by law.

RESPONSIBILITIES

Agencies are responsible for:

- Adopting this policy.
- Communicating this policy to all covered employees, contractors, vendors, volunteers and interns.
- Requiring covered staff to comply with this policy, including sending staff home and/or taking other action for non-compliance when appropriate, including when positive test results are received.
- For agencies with on-site testing facilities, administering and paying for testing at least weekly.
- For agencies without on-site testing facilities, reviewing all outside test results received and monitoring staff compliance with the testing requirements of this Policy.
- Paying for all screening testing required by this Policy.
- Maintaining completed attestation forms.

FORMS

COVID-19 Testing Consent Form

The COVID-19 pandemic presents an unprecedented challenge to our State. The virus is highly contagious, including among asymptomatic people, and potentially deadly. As of August 6, 2021, over 7,600 of our family members, friends, and neighbors in Minnesota have perished from COVID-19. According to the Centers for Disease Control and Prevention and the Minnesota Department of Health, the best way to prevent infection and from spreading the disease is by being vaccinated. COVID-19 vaccines have proven themselves to be safe and effective. Staff who access the workplace or provide public service outside of their homes on behalf of an agency without vaccination pose a particular risk of COVID-19 exposure to themselves, their colleagues, and to members of the public. Additionally, ongoing community transmission of the more transmissible Delta variant of COVID-19 in Minnesota, especially among unvaccinated individuals, presents a continuous risk of infection.

The State strongly encourages agency staff to get vaccinated against COVID-19. Agency staff who are assigned to work at the workplace (rather than at-home telework) or otherwise provide agency services outside of their home and do not provide proof that they are fully vaccinated against COVID-19 must be tested on a regular basis for active infection as a critical tool for minimizing potential exposure to COVID-19 and preventing further transmission of the virus.

Testing staff for COVID-19 infection is a critical tool for minimizing potential exposure to COVID-19 and enabling an early response to prevent further transmission of the virus. To protect, to the extent reasonably possible, the health and safety of our staff and our customers from the direct threat resulting from the spread of COVID-19 in the workplace, except for staff who provide proof that they have been fully vaccinated against COVID-19, [Agency] is requiring mandatory testing of all staff members for COVID-19 who access the workplace or provide public service outside of their homes on behalf of an agency as set forth in HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing.

As part of this ongoing testing, staff members who do not submit proof of full COVID-19 vaccination will have their information and specimen collected to provide a COVID-19 test result. The COVID-19 test sample and other information collected during the COVID-19 test is classified as private data under the Minnesota Government Data Practices Act. [Agency] will use this data to screen staff for COVID-19 pursuant to the HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing. The data helps us to determine whether you have COVID-19 and will be denied admission to the workplace or will not be authorized to provide public service outside of the home for the protection of [Agency] staff and/or the public.

Staff members have the right to refuse to take a COVID-19 test and are not legally required to provide the requested data. However, if a staff member has not submitted proof of full vaccination and refuses to take a COVID-19 test or does not provide the requested information or sample to conduct a COVID-19 test, the individual: will not be admitted to the workplace or be authorized to provide public service outside of their home; may be subject to discipline, up to and including discharge; and may be sent home and placed in no-pay status, all as set forth in HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing.

Access to private information gathered under HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing will be limited to the designated testing laboratory, the designated vendor who will communicate the test results to staff members, the Minnesota Department of Health, local public health, agency HR staff, [Agency] safety administrator, members of [Agency] staff with a business need to know, and others authorized by law.

By signing below, I understand, agree, certify, and authorize the following:

- I have read and agree to the terms set forth in this COVID-19 Testing Consent form and HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing.
- I have been advised that I have the right to refuse to submit to COVID-19 testing.
- I consent to submit to COVID-19 testing.
- My data, including my information and my specimen, may be collected, shared, used, and retained by [Agency] as detailed in HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing, as detailed above, and as authorized by law.
- My consent will be in effect for the duration of the testing requirement, or until I rescind my consent in writing.
- I will hold harmless the [Agency], the State of Minnesota, all contracted vendors, and all their respective employees, representatives, officers, agents, and contractors from any and all liability and claims related to or that may arise from COVID-19 testing.
- **I understand that if I become fully vaccinated against COVID-19, submit a new attestation form and submit proof to my agency that I am fully vaccinated I will be removed from the COVID-19 testing requirement.**

Signature

Date

COVID-19 Vaccine Attestation Form

Agency Notice of Intent to Collect Private Data: COVID-19 VACCINATION STATUS

As you are aware, HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing, provides that staff members who are assigned to work at the workplace (rather than at-home telework) or otherwise provide agency services outside the staff member's home, and who are fully vaccinated against COVID-19, are not required to participate in weekly COVID-19 testing. In addition, employees who have a telework arrangement but wish to enter the workplace for more than 10 minutes or provide agency services outside their home may do so only if they are fully vaccinated against COVID-19. Because you are assigned to work at the workplace (rather than at-home telework), wish to access the workplace for more than 10 minutes, or otherwise provide agency services outside your home, the agency is requesting you to identify your COVID-19 vaccination status. You are considered fully vaccinated two weeks after your second dose in a 2-dose COVID-19 vaccination series approved by the U.S. Food and Drug Administration ("FDA") or the World Health Organization ("WHO"); or two weeks after a single-dose COVID-19 vaccine approved by the FDA or the WHO.

If you are fully vaccinated against COVID-19, the agency is requesting you to present your CDC COVID-19 Vaccination Record Card or, if vaccinated in another country, then an alternative official vaccination record, as proof of your FDA- or WHO-approved COVID-19 vaccination status. **This information will be used to confirm whether you are fully vaccinated against COVID-19, whether you are authorized to enter the workplace or provide agency services outside of your home, and whether you may be exempted from mandatory COVID-19 testing.**

You are not legally required to provide the requested data. If you fail to provide the data, however, you will be considered to be unvaccinated against COVID-19, and you may be required to undergo testing as required by HR/LR Policy # 1446 COVID-19 Proof of Vaccination and Testing. If you do not show proof of full vaccination against COVID-19 and fail to participate in routine COVID-19 screening testing as required by the policy, you may be refused entry to the workplace, sent home and placed in no-pay status, and subject to disciplinary action, up to and including discharge.

The Minnesota Government Data Practices Act classifies your vaccination status as private data about you. The data collected from you may be shared with agency HR staff, agency safety administrator, members of the agency's staff with a business need to know, and other persons or entities authorized by law.

Vaccine Attestation:

ONLY CHECK ONE OF THE FOLLOWING OPTIONS:

_____ By checking here and signing my name below, I certify that I have been fully vaccinated against COVID-19. "Fully vaccinated" means that it has been at least two weeks since I received both doses of a two-dose vaccine series or a single dose of a one-dose vaccine approved by the FDA or WHO.

_____ By checking here and signing my name below, I am declining to certify that I have been fully vaccinated against COVID-19. I understand that I may later submit proof of full vaccination to [Agency] if I become fully vaccinated against COVID-19 or decide to submit proof of full vaccination to [Agency].

Staff Member Name: _____

Date: _____

Position: _____

Signature: _____

FOR HR USE ONLY:

I have examined the COVID-19 vaccination card presented by the above-named staff member, and it:

- identifies the staff member's name and date of birth, manufacturer of the vaccine administered, and dates of administration,
- shows that at least 2 weeks have passed since the staff member's second dose in a 2-dose series approved by the FDA or the WHO or that at least 2 weeks have passed after a single dose COVID-19 vaccine approved by the FDA or the WHO, and
- appears, to the best of my knowledge, to be genuine and relates to the staff member named.

Initials of HR Staff Member

Date

CONTACTS

MMB Enterprise Human Resources

EXHIBIT

B

Sept 27, 2021

Dear Students,

I'm writing to inform you that I have been placed on no-pay status and excluded from the LSC campus workplace because I have refused to comply with a recently imposed policy that requires that all employees of the state of Minnesota provide proof that they have been fully vaccinated against COVID-19 or submit to a weekly COVID-19 test.

You can view the policy here: Policy 1446.

I am not opposed to vaccines in general or COVID-19 vaccines in particular. However, I believe that Policy 1446 is unlawful and arbitrary. It is also immoral in that it deploys workplace coercion to undermine the sacrosanct rights of medical autonomy, bodily self-determination, and privacy. The imposition of this policy has demoralized staff and faculty at Lake Superior College has contributed to the damaging polarization that now divides our society.

Governor Walz and the office of Minnesota Management and Budget (the department charged with development and oversight of the policy) have neither statutory nor Constitutional authority to impose the requirements specified in Policy 1446. Furthermore, the state of Minnesota is not currently under a Peacetime Emergency, so any powers assumed by the Governor under such terms are now null and void. Finally, my employment contract contains no provision authorizing the imposition of the requirements of Policy 1446.

We are supposed to live in a nation and a state governed by the rule of law. Laws must be duly enacted under the provisions of the Federal and State Constitutions, and must not violate individual rights. The arbitrary whims of politicians and bureaucrats cannot form the basis for civil society, yet that is the direction the state of Minnesota has taken under the Governorship of Tim Walz. It is shameful.

This is my 30th year teaching at this institution. It has been a pleasure to serve thousands of students over those many years. I love my work and I wish that I could continue to teach my classes but the administration has forbidden that. I am deeply sorry that it has come to this, but I refuse to be coerced into doing something that violates fundamental rights.

I know you will have many questions. I will not be in a position to answer them. In many ways I am as shocked and puzzled as you are.

I don't know when or if I will be allowed to resume my teaching duties. In the meantime I wish you all the best. I encourage you to pay attention to the world around you and think hard about what you see and hear.

Sincerely,

Russ Stewart